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MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

EXAMINER	
TORRES, MARCOS L	

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/534,139
Filing Date: May 06, 2005
Appellant(s): BORJESSON, HENRIK

D. Scott Moore
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8-8-08 appealing from the Office action mailed 1-25-08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5938721	Dussell et al.	8-1999
6799049	Zellner	9-2004
6785552	Shinozaki	8-2004
5598166	Ishikawa	1-1997
6317593	Vossler	11-2001
6950663	Pihl	9-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7, 12-17, 25-26 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Dussell US005938721.

As to claim 1, Dussell discloses a device for generating an alert signal (see col. 2, lines 5-7) comprising: positioning means for updating and storing an actual position of the device (see col. 3, lines 26-39; col. 9, lines 16-29), location storage means for storing the location of a place of interest (see col. 9, lines 30-49); means for storing a request for an alert signal associated with the location of a place of interest; and trigger means for comparing the actual position of the device with the location of the place of interest and triggering generation of said alert signal when the distance between the actual position of the device and the location of a the place of interest is less than a predetermined value (r); calendar means for storing calendar entries; clock means for keeping track of the actual time; and second trigger means for comparing the actual time with a calendar entry and triggering generation of said alert signal when the actual time matches the calendar entry, but only when the distance between the actual position of the device and the location of a the place of interest is less than the predetermined value (r) (see col. 7, lines 13-41; col. 8, line 45 – col. 9, line 15).

As to claim 2, Dussell discloses a device wherein the predetermined value (r) is variable, and may be set individually for each request for an alert signal (see col. 8, line 45 – col. 9, line 2, 38-49).

As to claim 3, Dussell discloses a device wherein the location storage means includes comprises a personal map program (see col. 9, lines 3-49).

As to claim 4, Dussell discloses a device wherein the location storage means includes comprises a browser for finding locations on a telecommunications network (see col. 7, line 42 – col. 8, line 11).

As to claim 7, Dussell discloses a device wherein the positioning means further is arranged configured to update the actual position of the device at regular time intervals (see col. 8, lines 45-50).

As to claim 12, Dussell discloses a device wherein the positioning means comprises a GPS receiver (see col. 3, lines 35-39).

As to claim 13, Dussell discloses a device wherein the device is a positioning device or an electronic organizer (see col. 3, lines 32-36).

Regarding claims 14-17, 25 and 28, they are the corresponding method claim of device claim 1-4 and 12-13. Therefore, claims 14-17, 25 and 28 are rejected for the same reasons as shown above.

As to claim 26, Dussell discloses a method wherein storing the actual position of the device comprises receiving position information from a mobile telecommunication network (see col. 7, lines 42-55).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dussell in view of Zellner US006799049B1.

As to claim 5, Dussell discloses everything as explained above (see claim 4) except for a WAP browser for finding locations. In an analogous art, Zellner discloses a WAP browser for finding locations (see col. 4, lines 10-17). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to use the WAP protocol for compatibility with a common and well-known protocol for mobile devices.

Regarding claim 18 is the corresponding method claim of device claim 5. Therefore, claim 18 is rejected for the same reasons as shown above.

6. Claims 6 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dussell in view of Shinozaki US006785552B2.

As to claim 6, Dussell discloses a device wherein the positioning means further is arranged configured to update the actual position of the device every time to have the current location which would include when the device changes base station (see col. 8, lines 45-50). In an analogous art, Shinozaki discloses updating the actual position of the

device every time the device changes base station (see col. 1, lines 44-48). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to update the position when changing base station because changing base station is a indication of moving from the range of the current base station to the range of the new base station.

Regarding claims 19-21, they are the corresponding method claim of device claim 6. Therefore, claims 19-21 are rejected for the same reasons as shown above.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dussell in view of Ishikawa US005598166.

As to claim 8, Dussell discloses everything as explained above (see claim 1) except for a device wherein the positioning means further is arranged configured to update the actual position of the device in dependence of the speed of the device. In an analogous art, Ishikawa discloses a device wherein the positioning means further is arranged configured to update the actual position of the device in dependence of the speed of the device (see col. 2, lines 16-37). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to update the position proportional with the speed of the device, since lack of speed would indicate no movement and updating would be unnecessary.

8. Claims 10-11 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dussell in view of Vossler US006317593B1.

As to claim 10 and 11, Dussell discloses that his device includes a scheduling and calendar programs that are well known in the art (see col. 7, lines 32; col. 9, lines

10-16). Altrough is well known that scheduling and calendaring program device wherein the calendar entry matches the actual time once or recurring Dussell does not enter in such simplistic and obvious detail of those types of programs. In an analogous art, Vossler discloses a device wherein the calendar entry matches the actual time repeatedly for a specified time unit or just one time (see col. 5, line 48 – col. 6, lines 11). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to use a calendaring and scheduling program for scheduling recurring or not recurring events.

Regarding claims 23-24, they are the corresponding method claim of device claims 10-11. Therefore, claims 23-24 are rejected for the same reasons as shown above.

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dussell inview of Pihl US006950663B2.

As to claim 27, Dussell discloses everything as explained above (see claim 26) except for a method wherein the mobile telecommunication network uses EOTD (Enhanced Observed Time Difference) or OTDOA (Observed Time Difference On Arrival). In an analogous art, Pihl discloses a method wherein the mobile telecommunication network uses EOTD (Enhanced Observed Time Difference; see col. 1, lines 14-40) or OTDOA (Observed Time Difference On Arrival; see col. 3, lines 29-35). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to make a design choice between the common and well known positioning function available and be compatible with existing standard such as GSM.

(10) Response to Argument

I. A. Independent Claims 1 and 14 are Patentable

Regarding appellant argument that Dussell does fails to disclose or suggest making a geographic alert conditional on a time condition as recited in the claims 1 and 14; Dussell discloses: "The present invention provides a means by which tasks can be **scheduled and/or prioritized based on location" "** (see col. 7, lines 13-31), and according to the Princeton dictionary scheduling is an ordered list of times at which things are planned to occur, or setting an order and time for planned events. Therefore with the definition of the Princeton dictionary the section would read: The present invention provides a means by which tasks can be ordered in a list of times at which things are planned to occur and prioritized based on location. Also Dussell disclose in col. 9 lines 3-16 "database 10 includes geo-coded references for a variety of business establishments and other locations (such as historical points of interest, stadiums, theaters, etc.) and is accessible by calendaring, scheduling and/or other application programs running on mobile computer system 20" such that Dussell inherently has second trigger means for comparing the actual time with a calendar entry and triggering generation of said alert when the actual time matches the calendar entry as the database including geo-coded references and being accessible by calendaring or scheduling programs running on the mobile computer system. Thereby, Dussell disclose both scheduling with includes time and prioritize.

Appellant states that the section of col. 7, lines 23-24 were taken in isolation and do not provide an accurate representation of their meaning. The examiner points that

the mentioned sentence is were the main invention is being disclosed. It would be preposterous that the section were the main invention is being disclosed does not provide an accurate representation of their meaning. To defend his position the appellant goes to the non limiting example of Dussell, examiner point out that the section start with "Fig. 2 illustrates an **exemplary situation**..." [col. 7, line 33], Dussell disclose that the section is an example, it is clear that the Dussell invention is not limited to just pick up milk or a being used in a grocery store, his invention is to provide a means by which tasks can be **scheduled and**/or **prioritized based on location**. According to the view of the appellant only one is being used, it is prioritized based on location, however Dussell disclose to do more than one, to **schedule and prioritize** based on location and the schedule is based on time as shown by the Princeton dictionary.

II. A. Claims 5 and 18 are Patentable

Dependent Claims 5 and 18 depend from independent Claims 1 and 14, respectively, which are rejected for at least the reasons discussed above in Section IA.

B. Claims 6 and 19-21 are Patentable

Dependent Claims 6 and 19-21 depend from independent Claims 1 and 14, respectively, which are rejected for at least the reasons discussed above in Section IA.

C. Claim 8 is Patentable

Dependent Claim 8 depends from independent Claim 1, respectively, which is rejected for at least the reasons discussed above in Section IA.

D. Claims 10, 11, 23 and 24 are Patentable

Dependent Claims 10, 11, 23 and 24 depend from independent Claims 1 and 14, respectively, which are rejected for at least the reasons discussed above in Section IA.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Marcos L Torres/

Examiner, Art Unit 2617

Conferees:

George Eng

/George Eng/
Supervisory Patent Examiner, Art Unit 2617

Duc Nguyen

/Duc Nguyen/
Supervisory Patent Examiner, Art Unit 2618